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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,022	05/31/2005	Peter Mikkelsen	742113-34	6147

25570 7590 06/18/2007
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EXAMINER

NGUYEN, PHONG H

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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06/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,022

Applicant(s)

MIKKELSEN ET AL.

Examiner

Phong H. Nguyen

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04/20/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al. (WO 01/32369 A1), hereinafter Jensen, in view of Ketels (5,702,295).

Regarding claims 1, 3, 4, 5, 8 and 11, Jensen teaches a food cutting device comprising a cutting means 13, a scanning means 7, a conveying means (2, 3 and 15) and

a control means (a computer system) for controlling and regulating a relevant cutting process parameters. See Figs. 1-2.

Jensen does not teach the conveying means having two conveyors disposed at a mutual angle different from 180° in a traverse direction of a conveying direction.

Ketels teaches a conveying means 2 having two conveyors 2.1 disposed at a mutual angle different from 180° in a traverse direction of a conveying direction for positioning workpieces. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art to provide the conveying means of Jensen two conveyors disposed at a mutual angle different from 180° in a traverse direction of a conveying direction as taught by Ketels for positioning workpieces.

Regarding claim 2, a first conveying unit 2, a second conveying unit 3 and a third conveying unit 15 are best seen in Fig. 2 in Jensen.

Regarding claim 6, the scanning unit being between the first and the second conveying units are best seen in Fig. 1 in Jensen.

Regarding claim 7, Jensen teaches the invention substantially as claimed except for the scanner being adapted to perform a 360° scanning of the products. At the time the invention was made, the use of a 360° scanner is well known in the art. Therefore, it would have been obvious to one skilled in the art to use a 360° scanner in the food-cutting device of Jensen for better scanning the dimensions of the products.

Regarding claim 9, Ketels teaches the invention substantially as claimed except for the angle between the two inclined conveyors 2.1. At the time the invention was

made it would have been an obvious matter of design choice to provide an appropriate angle between 100°-180° formed by the two inclined conveyors for accommodating a desired shape of a product.

Regarding claim 10, Ketels teaches the invention substantially as claimed except for the angle of inclination being automatically adjustable.

It has been held that the provision of adjustability, where need, is not a patentable advance. In re Brandt, 20 CCPA (Patents) 1005, 64 F.2d 693, 17 USPQ 295.

It has been held that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Rundell, 18 CCPA 1290, 48 F.2d 958, 9 USPQ 220.

Therefore, it would have been obvious to one skilled in the art to make the inclined conveyors automatically adjustable since such practice has been held as routine in the art.

Regarding claims 12 and 15, Ketels teaches the invention substantially as claimed except for the inclined conveyors being driven a common drive mean. At the time the invention was made, it would have been an obvious matter of design choice to provide a common drive mean for the inclined conveyors for easier controlling the speed of the inclined conveyors.

Regarding claims 13 and 14, conveyor belts 2.1 are best seen in Fig. 1 in Ketels.

Regarding claim 16, Jensen and Ketels teach using a computer system to control conveyor speed and cutting rate.

Regarding claim 17, the rotating knife 10 is best seen in Fig. 2 in Jensen.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dohrendorf, Hjorth and Wolcott et al. teach food-cutting devices of general interest.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phong H. Nguyen whose telephone number is 571-272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Timothy V. Eley/
Primary Examiner, A.U. 3724

PN: 

June 5, 2007